

ARKANSAS COURT OF APPEALS
D.P. MARSHALL JR., Judge

DIVISION IV

CACR06-1487

12 September 2007

JAMES WILLIAM KING,

APPELLANT

v.

STATE OF ARKANSAS,

APPELLEE

AN APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[CR-05-4563]

THE HONORABLE TIMOTHY
DAVIS FOX, CIRCUIT JUDGE

REVERSED AND DISMISSED

James King appeals his conviction for theft of property from his former employer, Harbor Freight Tools. King argues one point: that this brief record does not contain substantial evidence supporting his conviction.

The State had to prove that King knowingly took, or exercised unauthorized control over, a crane and two winches with the purpose of depriving Harbor Freight of its property. Ark. Code Ann. § 5-36-103(a)(1) (Supp. 2003). We will affirm King's conviction if substantial evidence supports it. Substantial evidence compels a

conclusion without any need to speculate. *Ross v. State*, 346 Ark. 225, 230, 57 S.W.3d 152, 156 (2001). To implement our standard of review, we consider only the evidence that supports the conviction. *Lukach v. State*, 310 Ark. 119, 122, 835 S.W.2d 852, 853 (1992).

Viewed in the light most favorable to the State, here is the record. Belinda Strickland testified that she worked with King at Harbor Freight Tools on the day of the alleged theft. She and King's best friend were working at the cash registers. King was working as the stock person, retrieving large items for customers from the back of the store. Near the end of the day, Strickland went to the restroom at the back of the store. When she returned, she "noticed something strange. . . . [T]he register is supposed to be on, . . . [and] I noticed the monitor was off, and [King] had just came up with a shop crane. . . . [T]hen a few minutes later, [King] pushed it out the door." Strickland testified that the normal store procedure called for customers to show a receipt so the cashier will know that they paid for their purchase. She gave no testimony about whether a customer was present when King took the crane out; the reasonable inference from all her testimony about the crane, however, is that she saw no customer. She did not hear King or the other cashier ring up the crane.

Later, while the managers were in the back of the store, Strickland saw King push two winches out the door. She did not hear anyone ring up the winches on the

cash register. She did not see any customers inside the store, nor did she see a receipt for the tools. She testified: “They wasn’t checked out. . . . And there wasn’t even a person there to get it. He just put—unless they was waiting on them outside the door, they wasn’t there, he just pushed it out.” Strickland reported what she had seen to her manager the next day. Sitting as the finder of fact, the circuit court convicted King of theft.

The State argues first that King did not preserve his sufficiency argument. We hold, however, that King’s motions for a directed verdict were specific enough. Ark. R. Crim. P. 33.1(b) and (c). Among other things, he argued:

Your Honor, I’m going to make a motion that the Court dismiss this on a directed verdict. I don’t believe that they have presented proof that would say that this employee of the store had stolen any merchandise. She doesn’t even say she saw him putting it anywhere. There was something that he was pushing outside, and there weren’t even any customers outside.

* * * *

Nothing that the State has presented would offer proof, especially beyond a reasonable doubt, that Mr. King did something that he wasn’t supposed to do while he was working at his job on July 7th of 2005.

* * * *

We’ll rest, and I’ll again renew my motion for a directed verdict that the State hasn’t presented proof beyond a reasonable doubt from anybody at the store that could document what was removed, if anything, that wasn’t supposed to be taken from the store other than a witness that worked there who is not sure because she couldn’t say for certain whether or not property was stolen. She hadn’t taken an inventory, she doesn’t know if anything was missing.

* * * *

We’re asking the Court to find that there’s been no evidence that would

convince the Court beyond a reasonable doubt that this man stole something from a store, especially of having any particular value that they're alleging in this information.

His motions apprised the circuit court that King challenged the sufficiency of the State's proof that King took or exercised unauthorized control over his employer's equipment, which he routinely moved around. *Williams v. State*, 325 Ark. 432, 435–36, 930 S.W.3d 297, 298 (1996). The court denied both motions. King may therefore question on appeal the sufficiency of the evidence.

On the merits, the evidence against King is circumstantial. We recognize that circumstantial evidence has great probative value. *Ross*, 346 Ark. at 230, 57 S.W.3d at 156. Moreover, circumstantial evidence can be substantial enough to sustain King's conviction if it excludes every other reasonable hypothesis except guilt. *Ibid.* Here it does not. We conclude that the circuit court had to speculate to convict King.

One of King's jobs for Harbor Freight was to move large equipment. Strickland is not a store manager, nor is she in charge of the inventory. No manager or other store employee testified against King. The State presented no evidence, documentary or oral, of merchandise actually missing from the store's inventory. Strickland acknowledged the possibility that there may have been a customer waiting outside the store for the winches. On this record, there are at least two reasonable hypotheses: King stole the crane and winches or this equipment was sold outside Strickland's

presence and she did not see the customers outside the store. The fact-finder had to speculate to choose between these reasonable hypotheses. *Wortham v. State*, 5 Ark. App. 161, 163–64, 634 S.W.2d 141, 142–43 (1982).

The State did not present substantial evidence that King committed theft. We therefore reverse the judgment and dismiss the case.

BIRD and HEFFLEY, JJ., agree.